

# In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS TO THE IDAHO )  
STATE "BAR EXAMINATION GRADING ) ORDER  
STANDARDS AND PROCEDURES" )  
\_\_\_\_\_ )

The Board of Commissioners of the Idaho State Bar having presented proposed changes to the BAR EXAMINATION GRADING STANDARDS AND PROCEDURES, and the Idaho Supreme Court having reviewed and approved the recommendations;

NOW, THEREFORE, IT IS HEREBY ORDERED, that the Idaho State Bar BAR EXAMINATION GRADING STANDARDS AND PROCEDURES, as they appear in the Idaho State Bar Desk Book and on the Idaho State Bar website be, and they are hereby, amended as follows:

## **Bar Examination Grading Standards And Procedures**

*Approved by the Idaho Supreme Court - July 24, 1974  
Amended November 13, 1989, March 15, 1991, June 10, 1999, June 15, 2001,  
September 19, 2009, June 1, 2010, ~~and~~ March 5, 2012 and March 3, 2017*

"The Bar examination should test the applicant's ability to reason logically, to analyze accurately, the problems presented to him and to demonstrate a thorough knowledge of the fundamental principles of law and their application. The examination should not be designed primarily for the purpose of testing information, memory or experience." (*National Conference of Bar Examiners: Canon 16*)

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### **III. GENERAL STANDARDS FOR THE ASSIGNMENT OF GRADES**

The Rules Governing Admission to Practice Law in Idaho state that a ~~grade-scaled score~~ of not less than ~~6870%~~ of the highest possible ~~grade-scaled score~~ shall be a passing ~~grade-scaled score~~ on an examination. (IBCR 217(k)(2)). Since ~~essay and MPT examination~~ the total possible grades are assigned on a grade range is from 0-100, the effect of a very bad answer must be clearly understood.

Grades are assigned on a scale of 0-100, although most grades will fall between 40-100. A grade of "0" hurts an applicant more than two grades of "100" help. ~~It is numerically possible to fall 70 points below passing (a grade) on one bad answer, but that applicant could not possibly gain more than 60 points above the "passing" mark of 70 with two 100 point answers.~~ Therefore, as a practical matter, most grades should fall within the range of 40-100. As a result, an applicant who makes a reasonable attempt to answer a question but who obviously has not written a passing answer will not be so severely penalized for that bad answer that he or she has little chance to ever recover. These grades should be assigned in five (5) point increments ~~(this applies to grades both above and below 70).~~ The following standards should be applied in assigning grades to essay and MPT examination answers:

### Essay Grading Standards

- 90-95-100** A grade of 90-100 demonstrates a **high degree of competence** in response to the question. While not reserved for a perfect answer, a 90-100 answer demonstrates a full understanding of the facts, a complete recognition of the issues presented and the applicable principles of law, and a good ability to reason to a conclusion. A 90-100 answer is clear, concise and complete.
- 80-85** A grade of 80-85 demonstrates **clear competence** in response to the question. An 80-85 answer demonstrates a fairly complete understanding of the facts, recognizes more of the issues and applicable law, and reasons fairly well to a conclusion.
- 70-75** A grade of 70-75 demonstrates **competence** in response to the question. A 70-75 answer demonstrates an adequate understanding of the facts, an adequate recognition of most of the issues and law, and adequate ability to reason to a conclusion.
- 60-65** A grade of 60-65 demonstrates **some competence** in response to the question but is inadequate. A 60-65 answer demonstrates a weak understanding of the facts, misses significant issues, fails to recognize applicable law, and demonstrates inadequate reasoning ability.
- 50-55** A grade of 50-55 demonstrates only **limited competence** in response to the question and is seriously flawed. A 50-55 answer demonstrates little understanding of the facts or law and little ability to reason to a conclusion.
- 40-45** A grade of 40-45 demonstrates **fundamental deficiencies** in understanding facts and law. A 40-45 answer shows virtually no ability to reason or analyze.
- 0** A grade of "0" should be assigned only when the applicant makes no attempt to answer the question, or when the answer shows no reasonable attempt to identify or address the issues raised by the question.

In connection with assignment of very high grades, it should be emphasized that the grade of 100 is not reserved for a "perfect" answer; it is not reserved even for a single "best" answer, which a grader may encounter to a particular question or on a particulate examination. A grade of 100 may be assigned if the grader believes that the applicant has done an exceptional job considering the time and circumstances.

If the applicant shows some understanding of the problem and has made some serious attempt to grapple with it, it would be most surprising to find that the applicant has not earned *at least* a 40. An applicant who has never taken a course in the subject but displays analytical ability should be able to earn credit for the attempted answer.

While there is no arbitrary "floor" in the grading system, the 40-100 practical "grading range" previously mentioned should be kept in mind for the reasons stated above.

### **MPT Grading Standards**

- 90-95-100** A grade of 90-95-100 demonstrates a **high degree of competence** in response to the assigned lawyering task. Although not reserved for a perfect answer, a grade of 90, 95 or 100 shows that the applicant fully understands both the practical and academic aspects of the task, is able to assimilate and digest the relevant factual and legal materials, incorporate them coherently into a well reasoned and well written product, and write a complete and responsive answer in the allotted time.
- 80-85** A grade of 80-85 demonstrates **clear competence** in response to the assigned lawyering task. It shows that the applicant has a fairly complete understanding of the practical and academic aspects of the task, is able to assimilate and digest most of the relevant factual and legal materials, incorporate them coherently into a logically well reasoned and well written product, and write a useful and responsive answer in the time allotted.
- 70-75** A grade of 70-75 demonstrates **competence** in response to the lawyering task assigned. It shows that the applicant somewhat understands the practical and academic aspects of the task and is able to assimilate and digest enough of the relevant factual and legal materials to allow him/her to incorporate them into a satisfactory, albeit less than complete, exposition of the task in the time allotted.
- 60-65** A grade of 60-65 demonstrates **some competence** in response to the lawyering task assigned but is **inadequate**. It shows that the applicant has a weak understanding of the task, tends not to appreciate the practical aspects, and is barely able to assimilate and digest the factual and legal materials in a useful written product in the time allotted. That is, it is an answer that you, as a supervising attorney, would find sufficiently lacking in the content you intended when you made the assignment.

**50-55** A grade of 50-55 demonstrates only **limited competence** in response to the lawyering task assigned and is **seriously flawed**. It shows that, although the applicant has attempted to grasp the factual and legal materials, he/she has only rudimentary understanding of the task and how to accomplish it.

**40-45** A grade of 40-45 demonstrates **fundamental deficiencies** in response to the lawyering task assigned. It shows that the applicant has a complete lack of understanding of the task or how to accomplish it and is unable to analyze the factual and legal materials and incorporate them into even a minimally acceptable written product.

**0** A grade of "0" should be assigned only when the applicant makes no attempt to answer the question.

#### **IV. GRADING PROCEDURES AND GUIDELINES**

1. **GRADERS.** Members of the Idaho State Bar shall be appointed by the Commissioners of the Idaho State Bar to grade the bar examination. Three (3) graders, with varying years of experience at the bar, shall constitute a grading team for the purpose of grading all the answers to a particular bar examination question. More than one bar examination question and its answers may be submitted to a grading team.
2. **PRE-GRADING PROCEDURE.** Before assigning any grades to bar examination answers, each grader of a grading team shall, together with the other graders of the team, complete the following pre-grading procedure in the following sequence:
  - a. Copies of the bar examination question to be graded by a particular grader, together with the analyses thereto, and a copy of the Grading Standards shall be furnished to each grader after the examination has been given, but sufficiently in advance of the grading session to allow the grader to familiarize himself with the question and standards.
  - b. Each grader, individually, shall outline in writing the issues, which are raised by the question. All members of the grading team shall then compare and discuss the issues raised by the examination question, and prepare a consensus summary of the issues of the particular question.
  - c. All members of the grading team shall then compare the "model answer" prepared by the National Conference of Bar Examiners with the graders' analysis of the question to arrive at a further consensus among the graders as to the issues and points of law raised by the question, which an examinee should be expected to identify and discuss.

- d. The grading team shall give consideration to the weight assigned by the National Conference of Bar Examiners to particular issues raised by a question.
  - e. The grading team should first read five (5) randomly selected answers of examinees to the bar examination question without assigning grades. The team should then discuss any additional issues or problems foreseen in grading the answers to the question.
3. **GRADING PROCEDURE.** After completing the pre-grading procedure, the graders shall grade all the answers to a single question in accordance with the following procedure:
- a. Read the entire answer before forming any opinions as to its merit or grade.
  - b. Consider the weight assigned by the National Conference of Bar Examiners to particular issues raised by a question.
  - c. After reading and discussing the answer, each grader shall assign a tentative grade to the answer after considering it as a *whole* and after considering all of the guidelines set forth in these instructions.
  - d. The team grade to be assigned to the answer must be concurred by all members of the grading team. The graders shall not determine the team grade by a quotient process of adding each of their grades together and dividing by the number of graders. Grades shall be assigned in increments of five (5) points. (e.g., 65, 70, 75, etc.)
  - e. Upon completion of the grading of the answers to a bar examination question each grader shall fill out a critique on the question.
4. **REVIEW BY COMMISSIONERS.** If at any time during the giving or grading of a bar examination, the commissioners determine that any question of the examination violates the Standards and Guidelines of Drafting Bar Examination questions or cannot be fairly graded for any reason, the Commissioners may order the examination graded without regard to such questions, or may order any other adjustment in the grading procedure which they find proper in the circumstances to compensate for such a question.
- ~~5. **REEVALUATION PROCEDURE.** There shall be a reevaluation of some of the failing examination papers in accordance with the following guidelines and procedure:~~
- ~~a. The Commissioners of the Idaho State Bar shall appoint a Reevaluation Team of three or more reviewers from the members of the Bar with varying years of experience as graders, but the reviewers of the Reevaluation Team shall not be~~

~~graders of the bar examination to which they are assigned. After all of the questions on a bar examination have been graded, the Commissioners, or their delegated committee, shall total the same for each examinee and determine the average grade for each examinee on all of his or her answers to the examination.~~

~~In accordance with the rules of the Supreme Court, those receiving an average grade of 70% or more of the highest possible grade for that examination shall be certified to the Supreme Court as having passed the examination.~~

~~b. The Commissioners shall thereafter submit to the reviewers, for reevaluation under the guidelines herein set forth, all examination papers of examinees who failed to obtain an average of 70 points per answer on the examination who:~~

~~1. Received an average grade per question on the entire examination of 66 2/3 or more but less than 70, or~~

~~2. Have been certified by the Supreme Court or Commissioners for review by the Reevaluation Team.~~

~~c. The Reevaluation Team shall review the examination papers submitted to it in the following manner:~~

~~1. Each examinee's answers to all examination questions shall be reassembled in one exam package in numeric order before delivery to the Reevaluation Team, together with the grades assigned upon the initial grading. The reviewer shall also receive and consider the grade received by the applicant on the Multistate Bar Examination.~~

~~2. The reviewers of the Reevaluation Team shall read each question of the examination, the model or suggested answer, the weight assigned by the National Conference of Bar Examiners to particular issues, and the outline of the graders as to the issues and points of law sought to be raised by the question.~~

~~3. No reviewer of the team shall form any opinion as to the merits of an examination paper until all of the answers have been read. The reviewer shall then review and reevaluate the examination paper as a *whole* under all of the guidelines set forth in these instructions and make a single determination as to whether the entire examination, not any individual answer, merits a passing or failing grade. In making the pass/fail determination, the reviewer shall apply the following criteria: As a whole, whether the applicant's answers demonstrate competence in response to the questions, including an adequate understanding of the facts, an adequate recognition of most of the issues and the law, and an ability to reason to a conclusion.~~

~~4. The examination paper to be reviewed shall be read by one reviewer in total, that is the answers to each of the questions shall be read consecutively from~~

~~the beginning to the end of the examination. The reviewer shall then determine whether the examination paper merits a passing or failing grade, applying the criteria set forth in subsection 3 above, and shall indicate a "pass" or "fail" decision on this reevaluation report together with any comments.~~

~~5. After the first reviewer has read the examination paper being reviewed, a second reviewer shall read the examination paper in accordance with the foregoing guidelines, without seeing or knowing the decision and comments of the first reviewer, and shall indicate a "pass" or "fail" grade on the reevaluation report together with any comments. If both of the first two reviewers concur in a "pass" or "fail" grade the same shall constitute the grade on review.~~

~~6. If the first two reviewers do not concur in a "pass" or "fail" grade, the examination paper, the original grades, and the "pass" or "fail" determinations of the first two reviewers, together with their comments, shall be given to a third reviewer who shall likewise read all the answers and make a "pass" or "fail" determination which shall constitute the final grade on review.~~

~~d. Upon conclusion of the reevaluation of the grading as required by this rule, the Commissioners shall certify the results thereof to the Supreme Court.~~

**56. SCORING ESSAY AND PERFORMANCE QUESTIONS.** Following is the process for calculating scores on the essay questions:

- a. Graders use a 100-point scale for assigning initial scores on all essays as outlined in the "General Standards for the Assignment of Grades Scores" found in Section III herein.
- b. Scores assigned by the graders are then weighted to reflect the amount of testing time allotted to answer the questions.
- c. Weighted essay scores are scaled to the MBE to ensure consistent interpretation across test administrations.
- d. The scaled total essay score and the scaled MBE score each represent one half of the final combined score.
- e. A passing score on the Bar Examination is a score of not less than 6870% of the highest possible score. *Idaho Bar Commission Rule 217(k)(2).*

IT IS FURTHER ORDERED that this Order and the amendments shall be effective March 3, 2017.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Rules.

DATED this 27 day of March, 2017, *nunc pro tunc* March 3, 2017.

By Order of the Supreme Court

R. S. Burdick  
Roger S. Burdick, Chief Justice

ATTEST:

[Signature]  
Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the \_\_\_\_\_ entered in the above entitled cause and now on record in my office.  
WITNESS my hand and the Seal of this Court. 3-27-17

STEPHEN W. KENYON

Clerk

By [Signature]

Chief Deputy